

OLC 77-4090/a

30 September 1977

MEMORANDUM FOR

[Redacted]
Special Assistant to the General Counsel

STAT

FROM:

[Redacted]
Office of Legislative Counsel

STAT

SUBJECT: Request for Office of Legislative Counsel Views on
President's Reorganization Project Study of Legal
Representation Within the Executive Branch

1. The Office of Legislative Counsel maintains no regular contacts with other Federal agencies, departments or offices on matters of litigation or legal representation. There may be instances in which this Office would be involved in such activities in situations where, for example, Legislative Counsel information is directly or indirectly involved. The Legislative Counsel might also assist in providing access to and review of Agency files and information to Department of Justice attorneys.

2. The Office of Legislative Counsel does maintain contacts with the legal staffs of other agencies, departments and offices on matters relating to congressional liaison, coordination of views and exchanges of information on legislation of mutual interest, congressional hearings (including appearances by Agency and Community officials), and congressional investigations (e.g., the current inquiries relating to Korea and the KCIA).

3. The Office of Legislative Counsel provides support to the General Counsel on FOIA matters that might involve litigation. This includes locating documents relevant to FOIA requests and making recommendations for FOIA releases. The Office, however, defers to General Counsel when actual litigation is involved.

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Distribution:

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1 - OLC Subject

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OLC:RLB:sm (30 Sept 77)

MORI/CDF Pages
2-8

OLC #77-4090

OGC 77-6080
23 September 1977

MEMORANDUM FOR: See Distribution

FROM



Special Assistant to the General Counsel

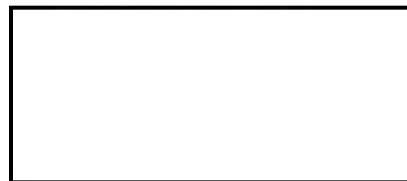
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SUBJECT : President's Reorganization Project Study of Legal
Representation Within the Executive Branch

1. The subject study was directed by the President on 25 August 1977. The President's memorandum of that date to the heads of executive departments and agencies outlines the purposes and objectives of the study (TAB A). Mr. F. T. Davis, Jr., Director, General Government Division, OMB, has written the Director and the General Counsel to inform them about the study (TAB B) and has requested the latter's assistance and participation.

2. Tony Lapham has asked me to take this on for him. I have already advised Mr. Davis that in some respects the problems to be studied, (see page 2, TAB A), do not involve the Director of Central Intelligence or CIA. On the other hand, I think we have a contribution to make in support of objective number 2 (page 2, TAB A) and therefore request that you advise me of the nature and frequency of contacts you and your components have with U.S. attorneys, components of the Department of Justice (DOJ) and the legal staffs of other departments and agencies. In addition, your thoughts, comments, or observations on how legal representation is or should be structured within the Executive Branch would be helpful. For example, should CIA (and other agencies) play a greater role in Freedom of Information Act and other litigation? In your opinion, should we rely more or less upon DOJ for advice and assistance? Should Agency attorneys be detailed to DOJ? Vice versa?

3. A response by 30 September would be appreciated.



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Attachments

Distribution:

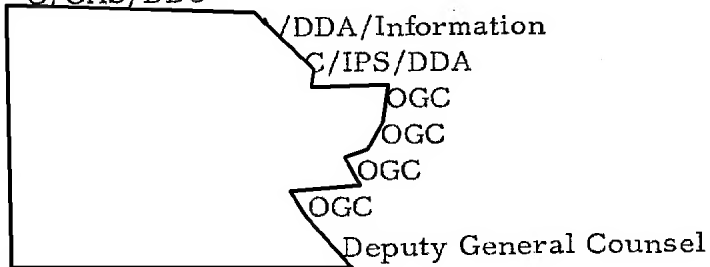
Acting DDCI
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Acting DDA
IG
Legislative Counsel
Comptroller
Executive Secretary
D/EEO



Mr. Lew Lapham

C/PCS/DDO

C/CAS/DDO



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FOR IMMEDIATE RELEASE

August 25, 1977

Office of the White House Press Secretary

THE WHITE HOUSE

MEMORANDUM FOR THE HEADS OF

EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Examination of the Federal Government's Legal Representation System

I have directed my Reorganization Project Staff at the Office of Management and Budget to review the Federal government's system for providing legal advice and representation to its departments, agencies, and regulatory commissions.

This study is designed to improve the way governmental units use the legal resources at their disposal, which include their own legal offices and the services of the Department of Justice, including United States Attorneys. Better use of these resources should help prevent unnecessary litigation and administrative delay by enabling the Federal government to do a better job of complying with its own rules and regulations.

A second objective will be to improve the way litigation is conducted in order to ensure better and more uniform application of the law.

This study will rely heavily on the advice and counsel of the Congress, Federal departments, agencies, and regulatory commissions, State and local officials, private organizations and the public.

I consider the effective use of legal resources to be a vital part of my Administration's effort to improve the performance of the Federal government; accordingly, I ask for your cooperation in providing staff assistance and other resources to assure the success of this review.

In order to inform all interested parties that this study is underway, I have directed that this memorandum be published in the Federal Register.

JIMMY CARTER

#

Federal Legal Representation

Problems

The Justice Department at one time carried on all litigation for the federal government. Increasingly in recent years departments and agencies have been given their own litigating capability. Today at least 21 separate units conduct some or all of their own litigation.

The growing friction between the Department of Justice and the other units of the federal government over litigation responsibilities is a symptom of several problems:

1. Lack of Coordination in Legal Action

This leads to the establishment of precedents at odds with government-wide policy positions and to nonuniform application of the law.

A recent Justice Department study reveals there is also inconsistent priorities for criminal prosecution among the Districts.

2. Misallocation of Resources

There are some 27 departments, agencies, and regulatory commissions which now employ about 10,000 attorneys in federal regional offices around the country. Their relationship to the 94 U.S. Attorney Offices has never been adequately studied to determine how improved coordination and cooperation can be achieved among these important offices.

3. Lack of Coordination in Policy-making

Poor coordination among agency policy-makers sometimes leads to unnecessary litigation.

Objectives

A Reorganization Project study group, drawn from concerned departments and agencies, will undertake the following actions:

1. Survey all federal units with litigation responsibility, examining the source and scope of their authority, their actual operations, and their interrelationships with other units.
2. Determine the current use of legal counseling services provided by the legal staffs of departments and agencies and by the Department of Justice, including its U.S. Attorneys.
3. Present the issues to representatives of the Attorney General, department and agency General Counsels, and the U.S. Attorneys. This group will help to develop and test new approaches to improved coordination and communication.

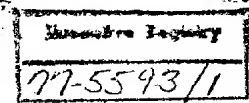


**PRESIDENT'S
REORGANIZATION
PROJECT**

Approved For Release 2006/08/10 : CIA-RDP82M00345R000700020035-9

WASHINGTON, D.C. 20503

September 8, 1977



OGC 77-5767
9-12-77

Admiral Stansfield Turner, USN
Director of Central Intelligence
Washington, D.C. 20505

Dear Admiral Turner:

On August 25, President Carter authorized a study of the Federal government's system for providing legal advice and representation to its departments, agencies and regulatory commissions. This study will be conducted by the President's Reorganization Project within the Office of Management and Budget. The study staff will be composed primarily of detailees from agencies and departments.

While most of this study's working level contacts will be with representatives of agencies' legal staffs, I want to take this opportunity to seek your advice and cooperation directly. The project is anxious to have the thoughtful suggestions of both executives utilizing Federal legal representation and the lawyers providing the representation. Accordingly, I have enclosed copies of the President's memorandum concerning this study and my recent letter to your General Counsel or Solicitor. Should you have any comments and suggestions now or as the study proceeds, I would appreciate hearing from you.

With the assistance of a representative of your legal staff, we will keep you informed about the study's progress and its deliberations. In this way, I anticipate all parties can best be informed about this reorganization initiative.

If you have any questions or if I can be of any assistance, please do not hesitate to call me at 395-4962. If I am unavailable, please ask for Judith Areen, the Project Director, or Christopher Davis, the Project Staff Director.

I look forward to your comments and working with you and your staff.

Sincerely,

F. T. Davis, Jr.
Director
General Government Division

Enclosure

25-7 15 OCT 1977

EXECUTIVE OFFICE OF THE PRESIDENT • OFFICE OF MANAGEMENT AND BUDGET



**PRESIDENT'S
REORGANIZATION
PROJECT**

Approved For Release 2006/08/10 : CIA-RDP82M00345R000700020035-9

9-12-77

WASHINGTON, D.C. 20503

Mr. Anthony A. Lapham
Office of the General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Lapham:

On August 15, 1977, President Carter directed the Reorganization Project in OMB to study the Federal Government's system for providing legal counseling and representation to its department, agencies, and regulatory commissions. The review will focus on the Department of Justice (including the U.S. Attorneys), the various offices of General Counsel, and legal field staffs.

I would like to take this opportunity to seek your advice and counsel not only as we start this important project, but at any stage along the way. If at any time you think we are missing critical points or information important to our deliberations, I would appreciate your letting me know.

In particular, I am requesting your suggestions on how the government's legal system could be more effectively structured. There are certain areas of interest which have already been identified:

- (1) Procedures to permit more effective use of the legal counseling services of department and agency legal staffs and of the Justice Department to speed compliance with new regulations and court decisions and to avoid unnecessary litigation;
- (2) Distribution of litigation responsibility between the Department of Justice and other departments, agencies, and regulatory commissions;
- (3) Procedures for developing and administering civil and criminal litigation priorities;

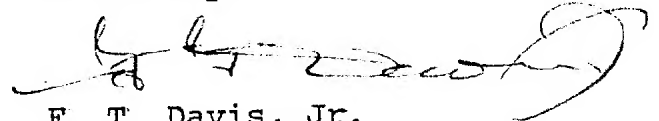
- (4) Mechanisms for resolving disputes among departments and units that otherwise may result in unnecessary litigation.

We would like to have your comments on these areas as well as other areas which should be examined in the study.

We are forming a task force to be composed of representative General Counsels and Departmental Solicitors, representatives of the Department of Justice and Policy officials. I would appreciate your designating someone within your office to serve as your liaison with our study effort. Your response by September 15, 1977, will permit me to have the benefit of your thoughts during development of the project work plan.

If you have any questions or if I can be of any assistance, please do not hesitate to call me at (202) 395-4962 (IDS 103). If I am unavailable, please ask for Judy Areen, the Project Director, or Christopher Davis, the Project Staff Director.

Sincerely,



F. T. Davis, Jr.
Director
General Government Division

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

C&R Staff Contacts with Department of Justice

FROM:

NO.

STAT

DATE

29 Sept 77

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

OLC/Legislative

2.

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Per your request of 27 Sept 77, for our experiences in contacts with DOJ attorneys the following information may be pertinent:

FOIA/Litigation

C&R Staff defers to OGC when actual litigation is involved. However, C&R does provide basic staff support by:

a. Locating documents relevant to a FOIA request, and,

b. making recommendations for FOIA release.

Documents provided by C&R are then reviewed by OGC personnel who prepare the necessary affidavits for any litigation and maintain liaison with DOJ attorneys.

ROK/KCIA Congressional Investigations (Flynt/Fraser Subcommittees)

C&R Staff helps provide access to CIA classified information to DOJ attorneys. We have provided this service since Aug 76.

I hope this info is responsive to your needs.

Rodger

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel
6C19 HQ

EXTENSION

NO.

DATE

26 SEP 1977

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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JW

OGC has asked us for our input for the attached request from OMB for Agency comments on the President's "Reorganization Project." Specifically, this has to do with the Government's system for providing legal counseling and representation. All we need concern ourselves with is OLC's relationships with the Justice Department, other agencies' legal staffs. U.S. Attorneys, etc. I will prepare a reply to OGC [redacted] but would appreciate your views on the experiences of your staff in this area, in order to give OGC a comprehensive reply. I really don't think there is much involved here, but please let me know, say by Wednesday the 28th. Thanks.

STAT



1-3: To my recollection Liaison has not had dealings with any of the above except perhaps other agencies legal staff when preparing something like a cony. appearance.